BAIL SLIP

The Petitioners/Accused namely 1) Siva Prakasam (A1), 2) Arunachalam (A3), 3) Nagaraj (A4), 4) Balachandran (A6), were directed to be released on bail as per order of this Honble Court dated 29/7/04 in Crl.M.P.No. 8593/04 in Crl.R.C. No. 802/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.NO.802 OF 2004

1.Sivaprakasam(A1)
2.Arunachalam(A3)
3.Nagaraj(A4)
4.Balachandran(A6) .. Petitioners/Accused

-vs-

1. Thiruvengadam .. Respondent /Complainant

This Revision is filed against the Judgment of the learned District and Sessions Judge, Nagapattinam in C.A.No.37 of 2003 dated 27.10.2003 confirming the conviction and modifying the sentence awarded by the Judicial Magistrate, No.2, Mannargudi in C.C.No.121 of 1998 dated 10.6.2003.

For petitioners : Mr.M.Sathyanarayanan
For respondent : Mr.Veera Kathiravan

O R D E R

This revision has been preferred against the Judgment in C.A.No.37 of 2003 on the file of the District and Sessions Judge, Nagapattinam which had arisen out of the Judgment in C.C.No.121 of 1998 on the file of Judicial Magistrate No.2, Mannargudi.

2. It is the case of the complainant that the occurrence had taken place on 10.7.1995 at about 6.30pm., all the accused came in cycle and picked up quarrel with Thiruvengadam(P.W.1) and immediately he had preferred a complaint with the Kottur Police , Nagapattinam District and on the same day, the complaint was registered under Crime NO.209 of 1995 under Sections 147,148,323,324 and 506 (ii) of IPC. Since the police have not taken any further steps on the complaint preferred by him and the police have closed the First Information Report, after waiting for nearly one year 5 months, from the date of action drop report of the police dated 9.8.1996,the complainant P.W.1 has preferred a private complaint under

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Section 200 of Cr.P.C. on 23.1.1998 before the Judicial Magistrate No.2, Mannargudi, who after taking cognizance of the case had summoned the accused for their appearance and on their appearance copies under Section 207 of Cr.P.C. were furnished to the accused and when the offence was explained to the accused and questioned the accused pleaded not guilty.

3. Before the trial Court, P.Ws 1 to 11 were examined. Exs P1 to P13 were exhibited and M.Os 1 to 3 were marked.

4. P.W.2 and P.W.4 are the injured witnesses in this case. P.W.1 in his evidence would depose that all the six accused are brothers of his (P.W.1) son Rajendran's wife Jayalakshmi and that the marriage between his son Rajendran and his wife Jayalakshmi/the sister of the accused took place in the year 1988 and their matrimonial life was not very cordial because Jayalakshmi used to go to her mother's house very often and there arose a dispute between his son Rajendran and brothers of Jayalakshmi and that on the date of occurrence, ie., on 10.7.1995 at about 6.30a.m., all the accused came in cycle and picked up quarrel with him(P.W.1) and A1 took a bamboo stick from the thatched shed in front of his house and assaulted him(P.W.1) on the head causing bleeding injury and in the course of the same transaction, A2 Shanmugam had assaulted him(P.W.1) with iron rod on the head causing simple injury and A3, Arunachalam had assaulted him(P.W.1) with Aruval on the right hand and right leg causing injuries. When his wife Kunjammal(P.W.4) intervened, preventing the accused from assaulting P.W.1, A2 Shanmugam has assaulted her with an iron rod on the right shoulder causing grievous injuries and A1 had assaulted P.W.4 with a stick on the left wrist causing fracture and A4 Nagarajan kicked her on the chest causing fracture on the ribs and A6 had assaulted his(P.W.1) son Rajendran with a bamboo stick on his(P.W.2) head. A2 Shanmugam also assaulted his(P.W1) son Rajendran (P.W2) on the left wrist causing grievous injuries. A5 Selvaraj had assaulted Rajendran(P.W.2) with a bamboo stick on the back causing fracture in the back bone and after committing the offence. The accused had left the place of occurrence in their cycle and that the injured witnesses were taken to Government Hospital, Mannargudi, where they were admitted as an inpatients and took treatment and the Kottur Police Head Constable came to Mannargudi Government Hospital and recorded his(P.W.1) statement which is Ex P1 and that P.W.2 and P.W.4 were referred to Government Head Quarters Hospital, Tanjore and that since the police have not taken any action against the complaint preferred by him, he had preferred Ex P2 private complaint.

4a. P.W.2 Rajendran is the son of his parents P.W.1 and P.W.4. He has also corroborated the evidence of P.W.1 as to the assault made by A1 on P.W.1 with a stick causing injuries on P.W1's head and also assault made by A2 and A3 on P.W.1 with an iron rod and Aruval respectively. He would also depose that A2 Shanmugam had assaulted P.W.4 with an iron rod on the right shoulder and that A1 Sivaprakasam had assaulted his mother P.W.4 with a stick on her left wrist causing fracture of the wrist bone and her mother was also assaulted by other accused. A6 Balachandran had assaulted with the bamboo stick on his head causing bleeding injury and that A5

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Selvaraj had assaulted him with a bamboo stick on the centre of the back causing fracture of the back bone and that A2 Shanmugam had assaulted him with an iron rod on the left wrist causing fracture and that he was removed to the Government Hospital at Mannargudi for treatment along with other injured witnesses and that P.W.1 has preferred a complaint with the police.

4b. P.W.3 is the doctor, who had treated P.W.2 Rajendran on 10.7.1995 at about 9.00 a.m. and issued Ex P3 Wound certificate for the injuries,he had sustained . P.W.3 has also examined P.W.1 Thiruvengadam on the same day at about 11.00 a.m., and issued ExP4 wound certificate. P.W.4 Kunjammal was examined by him on the same day and Ex P5 is the wound certificate relating to P.W.4 Kunjammal P.W.3 the doctor had noted the fracture in the left wrist and fracture of 8th,9th,and 10th ribs on the right side of chest of P.W.4. Kunjammal besides other injures noted in Ex P5. He has also noted the dislocation of S5 and S1 bone in the back bone of P.W.2 Rajendran.

4c. P.W.4 is another injured witness Kunjammal, who had also corroborated the evidence of P.W.1 and P.W.2. She has stated that A1 assaulted her with a bamboo stick on the left wrist and A4 kicked her on the right side of the chest causing fracture in the ribs. She speaks about the injuries sustained by P.W.1 and P.W.2 at the hands of the other accused.

4d. P.W.5 has seen all the accused going towards north from the house of P.W.1 after committing the crime in four cycles and that he had removed the injured in a taxi to the Government Hospital Mannargudi. P.W.6 is the Nephew of P.W.1. He has also corroborated the evidence of P.W.5 to the effect that after committing the crime six accused proceeded towards north from the house of P.W.1 in four cycles and that P.W.5 had removed the victim in a taxi to the Government Hospital, Mannargudi.

4e. P.W.7 had seen the injured in the house of P.W.1 and has assisted P.W.5 in removing the injured to the hospital.P.W.8 is the Doctor, who had examined PW.1 on 11.7.1995 at about 2.15p.m., at Government Head Quarters Hospital,Tanjore and X-rays were taken to him but no fracture was detected. Ex P10 is the wound certificate issued to P.W.1. At about 2.30p.m., on the same day, he had examined P.W.2 at Ward No. 28 in the same hospital and X-rays M.O.1 series were taken for the injuries sustained by him and from the X-ray , it was brought to light that the left radius bone was found fractured for P.W.2 Rajendran. He has further deposed that from the x-ray ,it was further revealed that S5 and S1 of the back bone was also found dislocated. M.O.2 series are the X-rays relating to P.W.2 Rajendran and that Ex P11 is the wound certificate given to P.W.2 by assessing the above said injuries are grievous in nature.

4f. P.W.9 the doctor, who had examined P.W.4 Kunjammal on 11.7.1995 for the injuries she had sustained. Ex P9 series are the x-ray relating to P.W.4 Kunjammal. The Doctor has opined that bone in the left wrist and the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8th,9th,10th ribs on the right side of the chest were fractured. P.W.10 is the doctor, who had examined P.W.2 Rajendran, for whom M.O1 series X-rays were taken by him. M.O.2 is the X-ray relating to P.W.2 Rajendran, which shows the fracture of radius bone on the left hand and dislocation of S5 and S1 bone in the back bone. Ex P11 is the wound certificate given by P.W.10. Ex P12 is the X-ray report.

4g. P.W.11, the doctor has examined P.W.4 Kunjammal on 11.7.1995 and that M.O.3 series are X-ray relating to Kunjammal. She has deposed that Kunjammal had sustained fracture in the achromine bone in the right shoulder and alna bone in the left wrist and 8th,9th, 10th ribs on the right chest were found fractured.

5. On the basis of the above evidence,when incriminating circumstances under Section 313 of Cr.P.C. were put to the accused, A1,A3,A4 and A6 would totally deny their complicity with the crime.
A5 died during the trial and A2 was absconding during the trial.

6 After going through the evidence before him, both the oral and documentary, the learned trial Judge has held that A1, A3, A4 and A6 guilty under Section 147 of IPC and convicted and sentenced them to undergo six months simple imprisonment and convicted and sentenced A1, A3, and A6 under Section 323 of IPC to undergo three months simple imprisonment and convicted and sentenced A1 and A4 under Section 325 of IPC to undergo two years simple imprisonment and also imposed a fine of Rs.1000/- each with default sentence. Apart from this, the learned trial Judge has awarded compensation of Rs.4,000/-(Rs.1000/-each) to the P.W.1/ complainant. Aggrieved by the findings of the trial Judge, the accused preferred an appeal in C.A.No.37 of 2003 before the District and Sessions Judge, Nagapattinam. The learned Sessions Judge, after due deliberation on the submissions made by the learned counsels for both sides, had confirmed the conviction against all the accused but modified the sentence against A1 and A4 under Section 325 of IPC to one year simple imprisonment instead of two years simple imprisonment and also imposed a fine of Rs.1000/- each with default sentence . Aggrieved by the findings of the learned Sessions Judge, the accused have preferred this revision.

7. Now the point for determination in this revision is whether the conviction and sentence under Section 147 of IPC against A1, A3, A4 and A6 and under Section 323 of IPC against A1 , A3 and A6 and under Section 325 of IPC against A1 and A4 are liable to be set aside for the reasons stated in the memorandum of revision?

8 . Heard Mr. M.Sathyanarayanan, learned Counsel for the revision petitioners, Mr. Veera Kathiravan,learned counsel appearing for the respondent and considered their rival submissions.

9.The Point:
There is no delay in preferring the First Information report by P.W.1 with the police which is seen from Ex P1 complaint. The police without taking

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

any action against the accused , on the basis of Ex P1 complaint which was preferred on 10.7.1995, they have filed action drop report on 9.8.1996 ie., an year later from the date of complaint which made P.W.1 to prefer a private complaint before the learned Judicial Magistrate No.2, Mannargudi on 16.3.1998. The accused are close relatives. P.W.2, who is the son of P.W.1(father) and P.W.4(mother) had married the sister of the accused viz,Jayalakshmi and that there were frequent quarrels between P.W.2 and the accused in connection with the behaviour of Jayalakshmi, who very often used to visit her parents house against the wishes of P.W.2 Rajendran and his parents viz., P.W.1 and P.W.4.

10. The motive for the occurrence as spoken to by P.W.1 is that thinking that Jayalakshmi the daughter-in-law of P.W.1 is subject to cruelty at the hands of P.W.1 and P.W.2 and P.W.4, her brothers the accused herein came in a cycle on the date of occurrence and abused P.W.1,P.W.2 and P.W.4 and assaulted them with a Bamboo stick , iron rod and aruval. According to P.W.1, A1, A2, A3 have assaulted him with bamboo stick, iron rod and aruval respectively and causing injuries on the forearm , right knee and on the left leg. According to P.W.2, A2 had assaulted him with iron rod on the left wrist and A5 had assaulted him with a stick on the back and A6 had assaulted him with bamboo stick on the head causing grievous injuries. According to P.W.4, A2 had assaulted her with iron rod on the right shoulder , A1 had assaulted her with a stick on the left wrist causing fracture and A4 had kicked her on the chest causing grievous injuries.

11. The learned trial Judge, after going through the evidence of the injured witness and after saying that the injuries have been corroborated with the medical evidence of P.W.3, P.W.8,P.W.9, P.W.10 and P.W.11, has come to a correct conclusion that the offence under Section 147 of IPC against A1, A3, A4 and A6, under Section 323 of IPC against A1,A3 and A6 and under Section 325 IPC against A1 and A4 have been made out and accordingly convicted them under the charge as indicated above. On appeal, the learned Sessions Judge, while confirming the conviction of the trial Judge against the accused , has modified the sentence against A1 and A4 to that of one year simple imprisonment instead of two years simple imprisonment.

12. The learned counsel appearing for the revision petitioners would contend that even as per the original complaint Ex P1 ,P.W.1 has stated that the accused have assaulted him only with stick and there is no allegation that the accused have assaulted with weapons like Aruval or Iron rod and so some leniency may be shown on A1 and A4 who have been convicted and sentenced under Section 325 of IPC. The overt-act attributed against A1 is that he had assaulted P.W.1 and P.W.4 with bamboo sticks on the person of P.W.1 and P.W.4. But P.W.1, according to P.W.3, the doctor, had sustained fracture in the left wrist due to the attack him by A1 with stick on the date of occurrence.

13. The learned counsel would further submit that A1 and A4 were in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

prison for nearly one week during the period of remand and that may be awarded as punishment for them increasing the amount of compensation to Rs.5000/-. Taking into consideration the nature of grievous injuries sustained at the hands of A4 by P.W.4 as corroborated by the evidence of P.W.3 doctor , I am declined to modify the sentence for A4. On the other hand, I am inclined to modify the sentence under Section 325 of IPC for A1 considering the grievous injuries he had caused to P.W.4 only on the wrist with stick. A1 is sentenced under Section 325 of IPC to the period already undergone instead of one year and imposed a fine of Rs.5000/- instead of Rs.1000/- and out of the fine amount of Rs.5,000/- , the entire amount is awarded as compensation under Section 357(1) of Cr.P.C. to P.W.4.

14. The learned counsel appearing for the revision petitioners, at this juncture represents that A4 may be released on Probation of Offenders Act. But taking into consideration,the plight of P.W.4 and the grievous injuries, she had sustained at the hands of A4 , I am declined to enlarge A4 on Probation of Offenders Act. The learned counsel for the revision petitioner would further submit that the provision under Section 360 of Cr.P.C. may be applied in this case in respect of A4 and in support of his contention, he relied on a decision reported in Daljit Singh and others-v- State of Punjab , through Secretary Home Affairs(2006)2 M.L.J.378). A careful reading of Section 360 of Cr.P.C. will go to show that only in a case of the accused, who is below 21 years of age, the provision under Section 360 of Cr.P.C. can be applied and not in all the cases. Admittedly , the age of A4 is 38. So A4 cannot take shelter under Section 360 of Cr.P.C.

15. In fine, the revision is dismissed with the following modifications.
The sentence of A1 under Section 325 of IPC is modified to that of the period already undergone instead of one year and imposed a fine of Rs.5000/-instead of Rs.1000/- and out of the fine amount of Rs.5000/-, the entire amount is awarded as compensation under Section 357 (1) of Cr.P.C. to P.W.4. The sentence of A1, A3, A6 are modified to that of the

सत्यमेव जयते
WEB COPY

period already undergone instead of respective sentence awarded against them. In other aspects, the findings of the learned Sessions Judge in C.A.No.37 of 2003 on the file of District and Sessions Judge, Nagapattinam is confirmed.

https://hcservices.ecourts.gov.in/hcservices/

sg

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The District and Sessions Judge, Nagapattinam.
2. The Judicial Magistrate No.2, Mannargudi
3.-d0-through the Chief Judicial Magistrate, Nagapattinam
4. The Officer in charge, Sub Jail, Nagapattinam.
5. The Superintendent, Central Prison, Cuddalore.
6. The Principal Sessions Judge, Nagapattinam
7. The Public Prosecutor, High Court, Madras

+ One cc to Mr. Veerakathiravan, Advocate SR 40499
+ One cc to Mr. M. Sathyanarayanan Advocate sR 40515
NSM (co)
sg 13/7/07 Crl.R.C.No.802/2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/